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Paper No. 10

In re Application of :
Paul F. Connelly, Jr. : DECISION ON SECOND
Application No. 09/819,201 : RENEWED PETITION
Filed: March 28, 2001 :
Attorney Docket No. PRC 00422 :

This is a decision on the second renewed petition filed by facsimile transmission on April 2, 2004 by which petitioner again requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated April 8, 2002. The second renewed petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The second renewed petition is granted.

Petitioner again alleges that the application is not in fact abandoned, because a proper reply to the Office letter in question was in fact filed on August 14, 2002 with a certificate of mailing dated August 8, 2002, and the reply was timely filed by reason of a concurrently filed request for a one month extension of time and payment of the \$55.00 extension fee.

A review of the record, which includes a submission filed by facsimile transmission on March 3, 2004 now attached to the instant petition, shows that the Office action dated April 8, 2002 set a shortened statutory period for filing a reply thereto which ran three months from the date of that action. The reply is of record in the application file as paper No. 4, and is endorsed as "not entered" (N.E.) because the response was considered to be untimely due to the fact that it was received more than three months after the April 8, 2002 date of the Office action.

Petitioner had previously supplied evidence in the form of a copy of a post card receipt showing that a check in the amount of \$55.00 accompanied the reply in payment of a one month extension of time fee had been received in the Office on August 14, 2002. Office financial records confirm receipt of this fee. In accordance with 37 CFR 1.136(a), payment of the extension fee is considered to be a constructive petition for an extension of time. However, even considering that the period for filing a reply to the Office action dated April 8, 2002 was extended to run through August 8, 2002, four months from the date of the Office action, a reply filed on August 14, 2002, would not have been timely.


Petitioner has now supplied evidence in the March 3, 2004 submission which shows that the extension of time and the fee therefor were filed with a 37 CFR 1.8(a) certificate of mailing dated August 8, 2002, a date within the period set for reply by the Office letter dated April 8, 2002, as extended by one month. Although the transmittal letter was directed to an incorrect application number, it is clear by reason of counsel's docket number, and the status of this application as a small entity application versus the large entity status of the application number erroneously listed on the transmittal letter for the extension of time, that the extension of time and fee were in fact directed to the instant application.

In summary, this application is not abandoned because petitioner has now established that a reply, a request for a one month extension of time, and the fee therefor, were timely filed. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications examiner for the following actions:

1. Correct the RAM system to show a \$55.00 extension of time fee filed on August 14, 2002 in this application, rather than in application 08/471,969.
2. Entry of the amendment filed on August 14, 2002 into the application and correction of the PALM system to show that the amendment was filed with a certificate of mailing dated August 8, 2002 and a one month extension of time filed on August 14, 2002 with a certificate of mailing dated August 8, 2002.

Thereafter, the application will be returned to the examiner for action on the reply filed on the amendment filed on August 14, 2002, certificate of mailing date August 8, 2002.

PETITION GRANTED.


E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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